

TYRONE EDWARD GOTT §
v. § CIVIL ACTION NO. 2:11cv500
DIRECTOR, TDCJ-CID §

The Petitioner Tyrone Gott, proceeding *pro se*, filed this application for the writ of habeas corpus under 28 U.S.C. §2254 complaining of the legality of his conviction. This Court ordered that the matter be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Gott pleaded guilty to indecency with a child - sexual contact on January 31, 2011, receiving a sentence of eight years in prison. In his federal habeas corpus petition, he alleged that he was mentally unstable, the prosecutor threatened to stack state jail charges if Gott did not accept the plea agreement, and he received ineffective assistance of counsel. The Respondent filed an answer to Gott's petition, to which Gott did not file a reply.

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The Respondent filed objections to the Report, agreeing with the conclusion but contending the Magistrate Judge failed to find that Gott's first ground for relief was unexhausted and procedurally barred to the extent that it is not interpreted as an ineffective assistance of counsel claim. In discussing Gott's first ground for relief, the Magistrate Judge set out those claims which Gott raised in his state habeas petition which paralleled those in his federal petition. The Magistrate Judge did not err by addressing these claims on the merits. *See also* 28 U.S.C. §2254(b)(2) (stating that an application for the writ of habeas corpus may be denied on the merits notwithstanding the applicant's failure to exhaust state remedies). The Respondent's objections provide no basis upon which to set aside the Report of the Magistrate Judge.

The Court has conducted a careful *de novo* review of those portions of the Magistrate Judge's proposed findings and recommendations to which the Respondent objected. *See* 28 U.S.C. §636(b)(1) (district judge shall "make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.") Upon such *de novo* review, the Court has determined that the Report of the Magistrate Judge is correct. It is accordingly

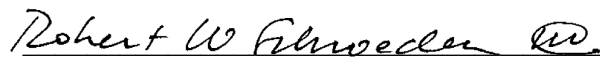
ORDERED that the Report of the Magistrate Judge (docket no. 15) is **ADOPTED** as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus is hereby **DISMISSED WITH PREJUDICE**. It is further

ORDERED that the Petitioner Tyrone Gott is **DENIED** a certificate of appealability *sua sponte*. Finally, it is

ORDERED that any and all motions which may be pending in this civil action are hereby **DENIED**.

SIGNED this 31st day of March, 2015.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE